

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT VOI

HCCOMM NO. E005 OF 2025

VOI ST. JUDE EDUCATIONAL CENTRE LIMITED.....1ST

PLAINTIFF/APPLICANT

PETER GABRIEL KITATU.....2ND

PLAINTIFF/APPLICANT

ROSINAH KITATU.....3RD

PLAINTIFF/APPLICANT

=VERSUS=

**KCB BANK
LIMITED.....DEFENDANT/RESPONDENT**

RULING

1. The application coming for consideration in this Ruling is the one dated 3rd November 2025 brought under Sections 1A, 1B, 3A of the Civil Procedure Act Cap 21 Order 40 Rules 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules 2010, Sections 80 No. 6 of 2012 Land Act, 2012, Section 89 No. 6 of 2012, Section 104 No. 6 of 2012 Land Act Section 106(3)(b), (c), (d) of No. 6 of 2012 Land Act Article 22(1), 23(b) of the Constitution 2010 seeking the following prayers:-

- (i) That this application be certified urgent and service in the first instance be dispensed with.**

- (ii) That an order of temporary injunction be issued restraining the Defendant/Respondent whereby the Defendant itself, its agents, servants or person claiming through them howsoever from advertising for sale, selling by public auction or public treaty or alienating, transferring interfering or by any other means whatsoever from dealing adversely with Plaintiffs/Applicants' properties known as L.R No. Voi/Ndara 'A'/683 registered in the name of the 1st Plaintiff/Applicant and L.R No. Mbololo/Tausa/2119 in the name of the 2nd Defendant.**
- (iii) That the Honorable Court be pleased to grant an order of temporary injunction restraining the Defendant/Respondent its agents, assigns, servants any other persons whosoever under their instructions from selling or in any way interfering with the Plaintiffs/Applicants quiet possession, use and developments of land parcel known as L.R No. Voi/Ndara 'A'/683 registered in the name of the 1st Plaintiff/Applicant and L.R No. Mbololo/Tausa/2119 in the name of the 2nd Defendant.**
- (iv) That an order do issue directing the Defendant to prepare and render to the Plaintiffs/Applicants and**

the court a true, proper full and accurate statement of accounts of all the Plaintiff/Applicant loan account as from 1st March 2018 all through 22nd October 2025.

(v) That the court to cancel, vary, suspend or postpone the statutory demand notice pursuant to Section 90(1), (2), 3(E) of the Land Act, Laws of Kenya in respect of charge over Title No. Voi/Ndara 'A'/163 in the name of Voi St. Jude Education Centre Limited and Title No. Mbololo/Tausa in the name of Peter Gabriel Kitatu.

(vi) That an order do issue directing the Defendant to supply detailed statements of account in relation to both the loan and current accounts from the inception of both accounts showing all debts and credits and interest rates charged at different times so as to arrive at the balance claimed by the bank to be outstanding on each account.

2. The application is based on grounds 1 to 12 which are as follows:-

(i) That charged parcel of land known as title No. Voi/Ndara 'A'/683 in the name of Voi St. Jude Educaiton Centre Limited and the Title No. Mbololo/Tausa/2119 in the name of Peter Gabriel Kitatu consist of or includes developed premises with

an educational institution accommodating pupils of day care to Grade 9 and the remedy proposed to sell the Charged Land and having regard the service of statutory Demand Notice pursuant to Section 90(1) (2) 3(e) of the Land Act 2012, to sell the charged land which is in occupation and use by the 1st Plaintiff/Applicant or and the pupils of day care to Grade 9 who are taking their examination and if the effect would be imposed would cause disturbance on the pupils.

(ii) Nothing prevented the Defendant/Respondent from coming to the Plaintiff premises learning institution to serve personally the Plaintiff/Applicant the requisite statutory notices as the Plaintiff's post office box office are nonfunctional as the requisite statutory notices did not reach the Plaintiffs/Applicants.

(iii) The Defendant/Respondent has failed to serve accurate calculations of the loan paid and the accuracy of the outstanding loan balance.

(iv) The Applicants/Plaintiffs do not have any inability to repay the loan as the over 680 pupils pay monthly over Kshs. 650,000/= as school fees through their

parents to the loan account No. AA2303825415 given by the Defendant and the Plaintiffs/Applicants do not admit any indebtedness to the Defendant.

(v) The Plaintiffs/Applicants have not persistently been in default of the obligation under the charge as the school fees paid monthly by the parents of pupils directly to the term loan account No. AA2303825415.

(vi) If the sale of land for pupils of day care to Grade 9, the Defendant shall have regard to the number of pupils who are now over 680 pupils in various classes and the pupils would be rendered with no rooms to use for learning and compound to play their activities.

(vii) The Plaintiffs/Applicants would not have any alternative means of providing the pupils who are now depending on this classes for use and occupation for their learning instructions from their teachers.

(viii) That the court to cancel, vary, suspend or postpone the statutory demand notice pursuant to Section 90(1), (2), 3(e) of the Land Act, Laws of Kenya in respect of charge over Title No. Voi/Ndara 'A'/163 in

the name of St. Jude Education Centre and Title No. Mbololo/Tausa in the name of Gabriel Kitatu.

- (ix) The Defendant/Respondent failed to comply with Section 56 of the Land Registration Act (No. 3 of 2012) to explain acknowledgment of effect of Section 90 of Land Act 2012 pursuant to the provisions of Section 56 of the Land Registration Act (No. 3 of 2012) where the Plaintiffs/Applicants are to acknowledge they understand the effect of Section 90 of the Land Act 2012 and the Defendant/Respondent remedies under the charge and the acknowledgement had to be signed on behalf of the Plaintiff and the persons witnessing the affixing of the common seal of the Plaintiff's/Chargor to this charge as director and/or secretary.**
- (x) The Plaintiffs/Applicants are repaying the principal amount, interest and charges monthly through school fees monthly.**
- (xi) That the risk of injustice to the Plaintiffs/Applicants arising from the statutory notice under Section 90(1) (2) 3(e) of the Land Act 2012, Laws of Kenya, outweighs any harm that may be suffered by the Defendant if the sale is temporary halted.**

(xii) No injustice will be done to the Defendant and this court has powers in respect of the reliefs available to the Plaintiffs.

3. The application is supported by the affidavit of **PETER GABRIEL KITATU** in which he deposed as follows:-

(i) THAT I am the 2nd Plaintiff/Applicant conversant with the facts touching this matter herein and competent to swear this affidavit.

(ii) THAT the 1st Plaintiff is the proprietor of L.R No. Voi/Ndara 'A'/683 registered in the name of Voi St. Jude Educational Centre Ltd.

(iii) THAT I am the proprietor of Title No. Mbololo/Tausa/2119, and the 2nd Plaintiff/Applicant in proprietor of Title No. Voi/Ndara 'A'/683.

(iv) The Defendant has instructed the interested party herein Keysian Auctioneers to sell by way of public auction a sum of Kshs. 35,307,511.70 as of 9th October 2025 without providing the statement account to show a true reflection of the Plaintiff's debt and without supplying the same to the Plaintiff.

(v) The terms of the letter of offer and loan facility agreement which together constitute the contractual

relationship between the parties and the letter of offer explicitly states that its terms and conditions, along with those contained in the agreement, must be read together.

(vi) These documents must be read together. These documents must bear the signatures of the duly authorized signatures of both the Plaintiffs and the Defendant on the acceptance page. These documents do not bear the signatures of the Plaintiffs on the acceptance page, and this demonstrates that there are no clear meeting of the minds and a voluntary acceptance of the terms and indeed confirm that the Plaintiffs never entered into a legally binding agreement.

(vii) That there was no breach by the Plaintiffs considering that the unsigned agreements stipulate payments by monthly instalments and a condition precedent channel entire instalments to the Defendants account.

(viii) The Plaintiff has never refused, failed and/or neglected to service the facility and they have never stopped channeling its entire instalments through the account held by the Defendant.

- (ix) THAT the 2nd Plaintiff/Applicant and the 3rd Plaintiff/Applicant t/a Voi St. Jude Education Centre, on 1st March 2018 received SME loan in the sum of Kshs. 4,500,000 (additional loan of Kshs. 1,779,000 to be amalgamated with existing loan of Kshs. 2,701,000 to make in all Kshs. 4,500,000) which was fully paid.**
- (x) THAT the 1st Plaintiff was granted another loan in the sum of Kshs. 5,000,000 with a repayment per month of Kshs. 4,918.77 which was fully paid.**
- (xi) The 1st Plaintiff/Applicant obtained a loan from the Defendant/Respondent in the sum of Kshs. 3,000,000 whose repayment was from school fees whose proposed repayment was 5 years - 15 terms which was fully paid.**
- (xii) The 1st Plaintiff/applicant created a legal charge dated 23rd August 2022 over Title No. Voi/Ndara 'A'/683 and secured a total aggregate sum of Kshs. 16,000,000 and also created a legal charge dated 23rd January 2023 over title no. Mbololo/Tausa/211 created in favour of the defendant and secured aggregate sum of Kshs. 16,000,000.**

(xiii) That the facility loan limit - SME learning institution loan from the above demonstrates that the approved limit was 32,000,000 and the facility shall be repaid in installments will be Kshs. 1,926,184 inclusive of interest over a maximum period of 10 years from the date of drawdown.

(xiv) The Plaintiffs/Applicants pay Kshs. 650,000 monthly to the term loan account number AA2302S415 the said amount is limited through the parents of the pupils of daycare, PP1, PP2 and Grade 1 to Grade 9 directly to the term loan account and therefore fulfilling the obligation that the facility should be paid Kshs. 1,926,184 and the 1st Plaintiff/Applicant, 2nd Plaintiff/Applicant and 3rd Plaintiff/Applicant have never failed to pay monthly and are not indebted.

(xv) THAT on 7th February 2023, Kshs. 35,682,135.58 was never disbursed to the 1st Plaintiff/Applicant, 2nd Plaintiff/Applicant and 3rd Plaintiff/Applicant nor did the 1st Plaintiff/Applicant, 2nd Plaintiff/Applicant and 3rd Plaintiff/Applicant request, sign form of acceptance for such banking facility under any agreement or arrangement with the Defendant.

(xvi) That a signature is a fundamental requirement for any change to be considered valid representing our agreement to the terms. The form of acceptance was not signed by the Plaintiffs/Applicants.

(xvii) THAT I have never received any statutory notice as required under Section 90 and 96(2) of the Land act 2012, as our last known address was closed and the Defendant's exercise of its statutory power of sale is unlawful.

(xviii) At the inception of the unsigned agreement by the 1st Plaintiff/Applicant, 2nd Plaintiff/Applicant and 3rd Plaintiff/Applicant, the defendant proceeded to disburse Kshs. 35,000,000 which is not within our knowledge and the same was not accepted and signed by the Plaintiffs/Applicants.

(xix) The offer which was a proposal by the Defendant to enter into a legally binding agreement, was not accepted and signed and therefore it was not a legally binding agreement.

(xx) That there was no acceptance of the offer of 2nd June 2021 and 23rd December 2022 respectively from the letter of offer in these various dates as the acceptance was not absolute and unqualified in

respect of the letter of offer dated 2nd June 2021 and 23rd December 2022, whether material or immaterial major or minor as the Plaintiff/Applicant/Respondent were not ad idem on all matters concerning the offer and acceptance.

(xxi) That the Defendant's bank's statement dated 18th June 2025, the Bank's statement discloses that the commitment amount Kshs. 35,682,135.58 and the principal amount disbursed to Kshs. 35,682,135.58 and the same started on 7th February 2023 and the maturity date would be on 7th February 2023 and on 7th February 2023 there was auto disburse activity for commitment in the sum of Kshs. 27,000,000 and on 28th February 2023 disbursement of Kshs. 5,000,000 and the offer was followed by non-acceptance suggesting possession from 28th February 2023 there was no concluded contracts.

(xxii) The Plaintiffs have never defaulted on any repayments and therefore the power of sale has not properly arisen and indeed the Plaintiffs were not served with statutory notices and there is no money still unpaid.

(xxiii) That the borrowers make monthly repayments and have failed to make repayment even for a month. If the Defendants are restrained from selling the properties until the suit is heard and determined there is no real risk that the debt may outstrip the value of the property as the borrowers make monthly repayments. The stoppage of the intended sale by the charger would not result in any continued growth of debt and the charge would not be exposed to any substance loss.

(xxiv) The facility shall be repaid at instalments of Kshs. 1,926,184 per term inclusive of interest of over a maximum period of 10 years from the date of drawdown. The statutory notice under Section 90(1), (2), (3)(e) of the Land Act, 2012, Laws of Kenya dated 7th May 2025 for loan account No. AA2303825415, amount of arrears is Kshs. 1,099,020.65 and the total outstanding debt is Kshs. 34,440,380.38.

(xxv) That the income from the school fees paid by the parents is directly paid to the loan account No. AA2303825415 by 680 learners in the school every

month P.T.O and this demonstrates the seriousness in settling the debt.

(xxvi) That the risk of injustice to the Plaintiff/Applicants arising from the statutory notice under Section 90(1), (2), 3(e) of the Land Act 2012, Laws of Kenya outweigh any harm that may be suffered by the Defendant if the sale is temporary halted.

(xxvii) There are serious questions and doubts raised as to the calculation of the loan paid and the accuracy of the outstanding loan balance.

(xxviii) There are serious questions and doubts raised as to the calculations of the loan paid and the accuracy of the outstanding loan balance.

(xxix) That there is no compliance with the statutory prerequisites for the exercise of the power of sale on the part of the Defendant.

(xxx) That the Plaintiffs/Applicants post offices have remained closed for a long time and the Defendants were not able to serve the Plaintiffs/Applicants the statutory notices through the post office for a long time.

- (xxxix) That the Plaintiff/Applicants might otherwise suffer irreparable injury which would not adequately be compensated for by an award of damages.**
- (xxxii) That the Plaintiffs/Applicants were never served a valuation report conducted contemporaneously with the intend sale.**
- (xxxiii) That presently the 1st Plaintiff/Applicant has over 680 children ranging from day care to grade 9 and their learning will be disturbed greatly if the Defendant is allowed to sale, transfer or in whatever alienate the land parcels known as Title No. Voi/Ndara 'A'/6803 in the name of St. Jude and Title No. Mbololo/Tausa/2119 in the name of Peter Gabriel Kitate.**
- (xxxiv) That the charge failed to issue and serve a valid notice under Section 90(2)(d) of the land Act and the charged intends to sell charged property without compliance with section 96 (2) of the Land Act.**
- (xxxv) The 1st Plaintiff/Applicant depends on servicing the charge from the income derived from the school fees of the 680 children at the time of our request of loan facility.**

(xxxvi) That the intended exercise of the statutory power of sale is unlawful and irregular for reasons that the charge is in breach of Section 56(2) of the Land Registration Act and Section 90 of the Land Act as the requisite notices under these sections were never served upon the Plaintiffs on 7th May 2025 as our post offices were non-functional and always using P. O. Box 80200-4018 Mombasa as an alternative and no reason prevented the Defendant from accessing Voi St. Jude Educational Centre as on that day was the opening day of the learning institution and all the staff had reported for duty.

(xxxvii) The properties in respect of charge over Title No. Voi/Ndara in the name of Voi St. Jude Education Centre and title No. Mbololo/Tausa/2119 in the name of Peter Gabriel kitatu were registered as a matrimonial and ancestral land and both the 2nd and 3rd Plaintiffs/Applicants have built an education centre whereby instructions are given currently to the learners from day care to grade 9. The 2nd Plaintiff/Applicant and the 3rd Plaintiff/Applicant are both the directors of the 1st Plaintiff/Applicant

(xxxviii) **That although the 1st and 2nd Plaintiff/Applicants were advanced a loan of Kshs. 32,000,000 which was disbursed progressively in two parts as Kshs. 16,000,000 and later another one Kshs. 16,000,000 the 2nd Plaintiff/Applicant always repay the same monthly in installments and they have failed to pay.**

(xxxix) **That the charges are defective and they could not provide the basis for an exercise of a statutory power No. Voi/Ndara 'A'/683 in the name of St. Jude Education Centre and title No. Mbololo/Tausa/2119 in the name of Peter Gabriel Kitatu.**

(xl) **That there was no written notice served on the Defendants as required by Section 84 of the Land Act No. 6 of 2012 and Section 56 of Land Registration Act No. 3 of 2012 which contains a special acknowledgement that the Plaintiff understood the contents of Section 84 and the said acknowledgment by signed by the charger and the persons attesting the affixation of the common seal.**

(xli) **That the two charge documents reveal that interest at the rate set out in the statutory notice dated 7th May 2025 revealed that the KCB bank Kenya Ltd - herein the charge of the Title No. Voi/Ndara 'A'/683**

and Title No. Mbololo/Tausa/2119 following the amounts Kshs. 1,099,020.65 being the amount stated and the sum continuous accrued interest at 16.2% p.a and an outstanding principle amount at 10% p.a and at 11.5% per annum (bank's variable Kshs. Base rate of 13% per annum.

(xlii) There is no written notice served on the Plaintiff/Applicants on the charger as per Section 84(1) No. 6 of 2012 Land Act giving the charger at least thirty days' notice of the reduction or increase in the rate of interest. The charge in its statutory notice demand 16.25 p.a on accrued interest in outstanding principal amount and 10% p.a and outstanding arrears.

(xlili) THAT unless this court restrains the Defendant servants, agents or any person acting on his instructions from entering, trespassing, accessing, claiming, controlling or in any other manner interfering with the said structure situated at land parcel No. 415 the Plaintiff will suffer irreparable.

4. The Respondent filed a Replying Affidavit sworn on 2nd December 2025 by **BERIC KIPLIMO** as follows:-

(i) THAT I am the Branch Manager at the Defendant/Respondent's Wundanyi Branch, fully conversant with the facts giving rise to these proceedings and competent to swear this Affidavit on behalf of the Defendant/Respondent, having been duly authorized to do so.

(ii) THAT I have read and understood the Plaintiffs/Applicant's Notice of Motion dated 03/11/2025 ("Application") as well as the 2nd Plaintiff/Applicant's Supporting Affidavit sworn on 03/11/2025 ("1st Supporting Affidavit") and the 3rd Plaintiff/Applicant's Supporting Affidavit sworn on 03/11/2025 ("2nd Supporting Affidavit") together with its annexures, and in response thereto. I wish to state as follows on behalf of the Defendant/Respondent.

(iii) THAT by way of preliminary objection, the Defendant/Respondent's advocates on record have advised me, which advice I verily believe to be true, that the application is fatally defective for the following reasons:

(a) The application offends the general provisions of the Civil Procedure Act and the Civil Procedure

Rules which require a suit to be instituted by way of a plaint.

(b) The application also offends the general provisions of the Civil Procedure Act and the Civil Procedure Rules which require an application to be anchored on a substantive suit;

(c) The application as framed is incompetent, misconceived, bad in law and amounts to an abuse of court process as it has been filed in the absence of a substantive suit.

(d) The application seeks substantive reliefs which cannot be granted in absence of a substantive suit; and

(e) In the absence of a substantive suit, this Honourable Court lacks jurisdiction to entertain the application.

(iv) THAT the Defendant/Respondent's advocates on record have further advised me, which advice I verily believe, that the foregoing circumstances warrant dismissal of the application with costs to the Defendant/Respondent without inquiry into its merits.

- (v) THAT without prejudice to the foregoing objection and should the Court nonetheless proceed on the premise that the application is competently before it, I verily believe that the orders sought remain wholly undeserved for the reasons set out hereinbelow.**
- (vi) THAT the Defendant/Respondent has complied with all statutory provisions governing the exercise of a chargee's statutory power of sale.**
- (vii) THAT at material times, the 2nd Plaintiff/Applicant and the 3rd Plaintiff/Applicant were married to each other and were the directors of the 1st Plaintiff/Applicant.**
- (viii) THAT the 1st Plaintiff/Applicant is the registered proprietor of all that parcel of land known as Voi/Ndara 'A'/683 while the 2nd Plaintiff/Applicant is the registered proprietor of all that parcel of land known as Mbololo/Tausa/2119.**
- (ix) THAT of the request of the 1st Plaintiff/Applicant, the Defendant/Respondent advanced a loan facility of Kshs. 16,000,000.00 ("1st Loan Facility") vide a Letter of Offer dated 26/07/2022 ("1st Offer Letter") to the 1st Plaintiff/Applicant.**
- (x) THAT the 2nd Plaintiff/Applicant and the 3rd Plaintiff/Applicant executed the form of acceptance**

contained in the 1st Offer Letter on behalf of the 1st Plaintiff/Applicant.

(xi) THAT the 1st Loan Facility was to be repaid with interest at the Bank's variable base rate of 13% p.a by way of instalments of Kshs. 906,650.00 over a maximum period of 120 months (30 terms).

(xii) THAT as part of the transaction, the 1st Plaintiff/Applicant created a charge dated 23/08/2022 ("1st Charge") over its parcel of land known as Voi/Ndara 'A'/683 to offer the Defendant/Respondent security for its loan repayment obligations.

(xiii) THAT later, at the request of the 1st Plaintiff/Applicant, the Defendant/Respondent advanced a loan facility of Kshs. 32,000,000.00 ("2nd Loan Facility") vide a Letter of Offer dated 23/12/2022 (2nd Offer Letter") to the 1st Plaintiff/Applicant. The 2nd Plaintiff/Applicant and the 3rd Plaintiff/Applicant executed the form of acceptance contained in the 2nd Offer Letter on behalf of the 1st Plaintiff/Applicant.

(xiv) THAT the Loan Facility was to be repaid with interest at the Bank's variable base rate of 13% p.a by way of termly instalments (every 4 months) of Kshs.

1,926,184.00 (“Termly Instalments”) over a period of 10 years.

(xv) THAT part of the 2nd Loan Facility was used to settle the outstanding balance on the 1st Loan Facility while the rest was to be utilized by the 1st Plaintiff/Applicant for construction of a junior secondary school within its premises.

(xvi) THAT further to the foregoing, an early drawdown of Kshs. 27,000,000.00 was released to the 1st Plaintiff/Applicant, with the balance of Kshs. 5,000,000.00 being applied towards perfecting the security.

(xvii) THAT in order to provide security for the Defendant/Respondent in respect of the 1st Plaintiff/Applicant’s loan repayment obligations, the 2nd Plaintiff/Applicant created a charge dated 23/01/2023 (“2nd Charge”) over the parcel of land known as Mbololo/Tausa/2119 in favour of the Defendant/Respondent and the 3rd Plaintiff/Applicant consented to the creation of the 2nd Charge.

(xviii) THAT in clear breach of the obligations set out in the 2nd Offer Letter, the 1st Plaintiff/Applicant

neglected to make the stipulated Termly Instalments.

(xix) THAT the Defendant/Respondent's advocates on record have advised me, which advice I verily believe to be true, that given the 1st Plaintiff/Applicant's breach of the terms of the 2nd Offer Letter, the Defendant/Respondent is well within its right to exercise its statutory power of sale as a charge.

(xx) THAT following the 1st Plaintiff/Applicant's breach, the defendant/Respondent has, step by statutory step, complied with all legal requirements governing the exercise of its statutory power of sale, leaving no basis for contesting the propriety of the process, as will be shown hereinafter:

(a) First, by virtue of the 1st Plaintiff/Applicant's breach of the terms of the 2nd Offer Letter, the Defendant/Respondent was entitled to demand the outstanding Loan Facility together with the accrued interest in strict conformity with Clauses 11.1 and 11.5 of the 2nd Offer Letter.

(b) Second, the Defendant/Respondent's right to realize its security by way of sale of all those parcels of land known as Voi/Ndara 'A'/683 and

Mbololo Tausa/2119 (together as the “Suit Properties”) is expressly preserved under the 1st Charge and 2nd Charge.

(c) Third, it is uncontroverted that in adherence with the provisions of Section 90(1)-(3) of the Land Act and Section 96(1)-(2) of the Land Act, the Defendant/Respondent served the 1st Plaintiff/Applicant and the 2nd Plaintiff/Applicant with the 3-Month Statutory Notice and the 40-Day Notice respectively.

(d) Fourth, consistent with Section 97 (1)-(2) of the Land Act, the Defendant/Respondent instructed a licensed valuer to prepare a forced sale valuation reports in respect of the Suit Properties prior to the intended sale.

(e) Fifth, the Defendant/Respondent instructed a licensed auctioneer to advertise and sell off the Suit Properties, who in tandem with the provisions of the Rule 15 of the Auctioneers Rules, served the 1st Plaintiff/Applicant and 2nd Plaintiff/Applicant with the Redemption Notice and the Notification of Sale.

(f) Lastly, the said licensed auctioneer has not advertised the Suit Properties given that the 45-Day redemption notice is still running.

(xxi) THAT in accordance with the provisions of the 1st and 2nd Charges (together “Charges”), all notices were duly served upon the 1st Plaintiff/Applicant and the 2nd Plaintiff/Applicant at their postal address - 749-80300 Voi (“Specified Address”) - which was the address provided in the 1st and 2nd Offer Letter (together “Offer Letters”) and the Charges.

(xxii) THAT the Offer Letters and Charges provide that the 1st Plaintiff/Applicant and the 2nd Plaintiff/Applicant may change their addresses, subject to notifying the Defendant/Respondent. Absent such communication, the Defendant/Respondent is legally bound to serve notices at the addresses originally specified in the Offer Letters and Charges.

(xxiii) THAT accordingly, the Defendant/Respondent and the licensed auctioneers cannot be faulted for serving the notices at the Specified Address. In any event, if the Plaintiff/Applicant’s changed their address, the said change was not communicated to

the Defendant/Respondent as required by the Offer Letters.

(xxiv) THAT contrary to the allegations of the Plaintiff/Applicants, the Offer Letters were duly executed while the Charges have complied with the provisions of Section 56 of the Land Registration Act.

(xxv) THAT, tellingly, the Plaintiff/Applicants have elected not to refer to the 1st Plaintiff/Applicant's letter dated 30/06/2025 ("the 1st Plaintiff/Applicant's Letter") by which, following service of the 3-Month Statutory Notice, the 1st Plaintiff/Applicant sought a restructure of the 2nd Loan Facility, an overture the Defendant/Respondent unequivocally declined through its letter dated 30/07/2025.

(xxvi) THAT the 1st Plaintiff/Applicant's Letter contains an implicit acknowledgment of its inability to repay the 2nd Loan Facility, an acknowledgment that corroborates the Defendant/Respondent's position that the 1st Plaintiff/Applicant is in breach of the repayment obligations under the 2nd Offer Letter.

(xxvii) THAT the Plaintiff/Applicants' claims that the Defendant/Respondent has tacked, consolidated and/or varied the Charges are unfounded as the

Defendant/Respondent has not engaged in any such actions.

(xxviii) THAT the Plaintiff/Applicants are intentionally attempting to mislead the Honourable Court by presenting unexecuted documents, even though they are aware that these documents were validly executed in the presence of an advocate.

(xxix) THAT the Plaintiff/Applicants continue to mislead this Honourable Court by deliberately omitting that the 1st Interested Party applied for an unsecured loan facility of Kshs. 5,000,000.00 (“Unsecured Loan Facility”) via an application dated 18/10/2022 (“Application Form”), long after it had been granted the 1st Loan Facility.

(xxx) THAT further, the Unsecured Loan Facility bears no relevance to these proceedings and has been cited merely to divert attention from the central matter: the 1st Plaintiff/Applicant’s breach of the terms of the 2nd Offer Letter.

(xxxix) THAT in view of the foregoing, there exists not a shred of evidence indicating that the Defendant/Respondent has violated or infringed upon any rights of the 1st Plaintiff/Applicant or the 2nd

Plaintiff/Applicant in the exercise of its statutory power of sale.

(xxxii) THAT I have been advised by the Defendant/Respondent's advocates on record, which advise I verily believe to be true, that without compelling evidence of procedural impropriety in the Defendant/Respondent's exercise of its statutory power of sale, this Honourable Court is duty-bound to refuse the reliefs sought in the application.

(xxxiii) THAT framed differently, the Plaintiff/Applicants do not have any plausible claim against the Defendant/Respondent.

(xxxiv) THAT consequently, it is in the interest of justice for this Honourable Court to dismiss the application with costs to the Defendant/Respondent.

5. The parties filed written submissions as follows; The applicants did not file any submissions.
6. The defendant/respondent submitted that the applicants have failed to meet the legal threshold for the grant of temporary injunctions to stop the sale of two properties used as security for loan facilities.
7. Factual background provided by the Bank indicates that after advancing an initial loan of Kshs. 16,000,000.00 in July 2022, a

second facility of Kshs. 32,000,000.00 was issued in December 2022 to consolidate the debt and fund the construction of a junior secondary school.

8. The Bank asserts that the applicants defaulted on the stipulated termly installments of Kshs. 1,926,184.00, prompting the issuance of a three-month statutory notice and a forty-day notice, followed by instructions to a licensed auctioneer and valuer.
9. The Bank argues that the applicants have not established a prima facie case with a probability of success because all statutory procedures under the Land Act and Auctioneers Rules were strictly followed, including the service of notices to the address provided in the loan documents.
10. Furthermore, the Bank maintains that the applicants will not suffer irreparable injury that cannot be compensated by damages, specifically noting that the applicants themselves quantified their potential losses in supplementary affidavits, which the Bank suggests confirms that a monetary award would be an adequate remedy.
11. On the balance of convenience, the Bank argues that it should not be further delayed in recovering a lawfully due debt, especially since the applicants retain a right to redeem the properties by paying the outstanding sum before a sale is finalized.

12. Finally, the Bank urges the court to reject requests for statements of account and the cancellation of statutory notices, arguing that such orders are not anchored in a main suit and would improperly determine the final merits of the case at an interlocutory stage.
13. **The issues for determination in this case are as follows;**
- (i) Whether the application is fatally defective for being filed without a substantive Plaintiff.**
 - (ii) Whether the Applicants have established a case with a probability of success.**
 - (iii) Whether the Applicants will suffer an injury that cannot be compensated by damages and where the balance of convenience lies.**
14. The Respondent raised a preliminary objection stating the application is "fatally defective" because it was filed in the absence of a substantive suit (Plaint). Under Order 3 Rule 1 of the Civil Procedure Rules, every suit shall be instituted by presenting a plaint to the court.
15. A careful review of the court record confirms this glaring procedural anomaly. The Plaintiffs filed a Notice of Motion seeking substantive reliefs of a permanent nature, including a temporary injunction to restrain a statutory power of sale, an order for the preparation of accounts, and the cancellation of statutory notices,

without first instituting a plaint or any other form of originating process that would properly inaugurate a civil suit.

16. The Civil Procedure Act and the Civil Procedure Rules, 2010, are unequivocal in their architecture; a suit is typically commenced by a plaint or, in certain specific instances, by an originating summons or a petition.
17. An application for a temporary injunction is an interlocutory remedy, which by its very definition, is ancillary to and dependent upon the existence of a principal suit.
18. An interlocutory application cannot roam the corridors of justice unattached to a substantive claim.
19. To grant the orders sought without a main suit would be to place the cart before the horse, essentially determining substantive rights and granting final reliefs on the basis of an un anchored motion.
20. This court finds that it lacks the jurisdictional bedrock upon which to graft the orders sought by the Applicants.
21. Jurisdiction is everything; without it, a court of law must down its tools and halt proceedings.
22. The upshot of this finding is that the application dated 3rd November 2025 is hereby struck out for being incompetent, as it is not anchored on any substantive suit.
23. Having struck out the application on this preliminary ground, it is not strictly necessary for this court to delve into the merits of

whether the Applicants established a prima facie case as defined in the locus classicus case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR), where the Court of Appeal held that a prima facie case is not merely a genuine and arguable case but one which, on the material presented, a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal.

24. The plaintiff's application is struck out with no orders as to costs and this file is marked as closed.

25. Orders to issue accordingly.

Dated, signed and delivered this 12th day of May 2026 virtually at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Mr. Angwenyi for the Applicant

Mr. Agevi holding brief for Mr. Mungai for the Respondent.